



Steven Shimberg

07/27/2004 02:42 PM

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Subject: Re: EPA International Meeting with UK Environment Agency Next Week...and MARAD Ship Scrapping

Who is the background paper for? Is it being shared with UK EA or is it just for EPA staff participating in the meetings? In either event, the memo needs more info about what has been and is happening in UK since November 2003 (e.g. do we have a sense of when the requisite permits may be issued to AbleUK?; is there any concern in UK about the 4 ships sitting in dock?). It should also include info about current plans for the 9 other ships for which we granted ED but which the court said could not be exported. Thanks.

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07/27/2004 02:04 PM

To: Thomas Skinner/DC/USEPA/US@EPA, Phyllis Harris/DC/USEPA/US@EPA, Steven Shimberg/DC/USEPA/US@EPA
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Subject: EPA International Meeting with UK Environment Agency Next Week...and MARAD Ship Scrapping

Tom, Phyllis and Steve --

Sir John Harman, chairman of the UK Environment Agency (EA), and a number of other EA officials, including chief executive Baroness Barbara Young will be in Washington early next week to meet with many senior

Agency officials on joint issues, and the export of Maritime Administration (MARAD) ships for dismantling and recycling in England, coordinated by OECA, could come up in discussions. In fact, Phyllis, along with Davis Jones in OFA, is on the agenda for 1:30 -- 3 p.m. Tuesday, August 3rd.

At OIA's request, FFEO's Joyce Olin has updated our MARAD ship scrapping background paper, attached below. Steve will see that, apart from some minor updates, this is the same paper we've used to keep the Agency and others informed on our progress on this issue over the past year. It is due to OIA by COB, so without objection, we'll pass it along. Again, we understand that this issue is not specified on the agenda, but it is possible that Ms. Young, who has had a number of conversations with Steve and others on the ships, could bring it up.

(See attached file: MARAD Admin briefing July 27.wpd)

I also have hard copy versions of the agenda and background information on Mr. Harman and Ms. Young, which I will provide to Roz and Gloria for you along with a printout of the background paper.

> If you have questions, concerns or suggestions, please contact me (564-0317) or Joyce (564-2772).

Thanks to Joyce for her quick work.

ENFORCEMENT CONFIDENTIAL

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MARAD Admin briefing July 27.wpd

Background on Export of MARAD Ships for Dismantling and Recycling in UK

July 27, 2004

- The U.S. Maritime Administration (MARAD) owns approximately 130 vessels currently being stored in Virginia, Texas and California that are scheduled to be dismantled. It is necessary to dispose of the vessels, particularly those in the James River in Virginia, as soon as possible, as many of them are in seriously deteriorated condition and are a threat to a sensitive ecosystem.
- MARAD has been exploring several options to dispose of ships, including domestic scrapping, foreign scrapping, and preparation of ships to be sunk as artificial reefs.
- The Toxic Substances Control Act (TSCA) currently prohibits the distribution in commerce (which includes export) of PCBs. Therefore, in order to export vessels for scrapping MARAD would need to apply for a TSCA 6(e)(3) exemption rule-making or ask EPA to exercise enforcement discretion.
- In FY 2003, MARAD received about \$31 million in appropriations for vessel disposal. MARAD advised EPA that export of ships for dismantling and recycling offers cost savings over domestic scrapping, and was needed as supplement to domestic scrapping capacity.
- The National Defense Authorization Act for Fiscal Year 2003 directs the Secretary of Transportation, Secretary of State, and Administrator of the Environmental Protection Agency to jointly carry out one or more pilot programs to explore the feasibility and advisability of alternatives for exporting these obsolete U.S. government vessels for scrapping.

Exemption 7(e)

- Instead, MARAD wrote to EPA on May 7, 2003 and formally requested that EPA exercise enforcement discretion to allow the export of thirteen MARAD owned vessels located in the James River to the Able UK facility in Teesside, UK for dismantling. Agency policy allows the exercise of enforcement discretion in limited circumstances where it is clearly necessary to serve the public interest.
- Prior to approving the request, EPA and MARAD visited and evaluated both the AbleUK facility in Teesside, UK, and the proposed disposal sites and spent several days reviewing the management of hazardous materials and determining that these materials would be handled in an environmentally sound manner. AbleUK was required to provide a detailed Technical Compliance Plan as well as information about applicable permits and licenses and information on off-site

disposal facilities. EPA was assured that Able had all necessary permits and licenses.

- EPA had discussions with environmental officials of the UK Environmental Agency and was assured that AbleUK has an excellent environmental record. EPA also consulted with British government officials to assure compliance with UK laws.
- On May 22, 2003, EPA issued an enforcement discretion letter (EDL), approving the export of thirteen MARAD vessels for dismantling and recycling at the AbleUK facility in Teesside, England.]

• Exemption 7(e)

Exemption 7(e) The EDL required MARAD to remove all liquid PCBs and “readily removable” non-liquid PCBs from the vessels prior to export.

- The EDL was not linked to a specific numeric level of PCBs but to the technical compliance plan of AbleUK which addressed how PCBs and other hazardous materials would be handled. Although the EDL is applicable only to export of PCBs, EPA was careful to consider AbleUK’s capacity to manage and dispose of other hazardous materials.
- EPA provided the required OECD notification of export to the British government on June 5, 2003 and received authorization for the export of the vessels from EA-UK..
- Prior to export, MARAD also was required to provide certificates of towability and seaworthiness from the U.S. Coast Guard.
- Four vessels were towed to the UK in October 2003 and are currently berthed at Able UK in Teesside, UK.
- On October 31, the EA UK issued a press statement saying that the authorizations to dismantle the vessels at Able UK were invalid. They made clear that the trans frontier shipment (TFS) permission was issued on the assumption that permits were in place for dismantling in a dry dock, effectively countering earlier assurances that approvals were in place. EA UK also noted that, with respect to Able UK’s Waste Management License (WML), the license modification that was issued by EA UK cannot be used to increase the amount of waste permitted on the site.
- To date, no work has been done on the vessels because of litigation by Friends of the Earth in the UK challenging the existing permits. The permits were found to be invalid by a court in the UK and are being rewritten.

- MARAD and EPA have been sued by the Basel Action Network (BAN) and the Sierra Club, alleging violations of TSCA, RCRA and NEPA and seeking to enjoin the remaining 9 vessels in the Able UK contract from being sent to the UK. A motion for summary judgment is pending.
- EPA's letter of enforcement discretion was expressly conditioned on the ships being dismantled and recycled at the AbleUK facility. **Exemption 7(e)**

Exemption 7(e)

- Throughout November 2003, high level discussions involving State, MARAD, EPA and CEQ took place to address UK concerns about the vessels.
- On November 3, Environment Minister Elliot Morley (who serves under DEFRA State Secretary Margaret Beckett), made a speech to the House of Commons asserting the vessels could not arrive in the UK legally but did not ask that the vessels be returned to the U.S. However, the EA has continued to maintain that repatriation remains a possibility.

CURRENT SITUATION:

- The vessels are currently docked in Teesside and MARAD has visited the facility to ensure the vessels are being maintained in a safe condition. In March the EA notified Able and MARAD that there was some risk of the vessels grounding in anticipated low tides during the spring months, however we have not heard that any groundings occurred.
- Able UK has prepared a planning application for approval of Hartlepool Borough Council. It will be supported by an Environmental Impact Assessment submitted in May 2004.
- In April 2004, the EA received Able's Waste Management License (WML) Application, which it has four months (or longer if agreed) to determine the application. If the EA determines that the WML should be granted, they cannot issue it until planning permission has been granted by the Hartlepool Borough Council.
- EPA has been assured that, once the UK permits are properly in place, the Environment Agency UK will be supportive of the scrapping of US vessels. In May 2004, the EA issued a news release stating that "dismantling the four US navy ships in Able UK's Graythorp Dock could represent the best environmental option, if the company obtains the necessary permissions for environmentally sound recovery."
- The status of the remaining 9 vessels in the Able UK/MARAD contract remains unresolved, pending the resolution of the BAN/Sierra Club litigation. Briefs are due on the motion for summary judgment on July 30. MARAD has advised EA

that the remaining nine vessels will not leave the US unless all permissions are in place.

- OPPTS is working with MARAD on a rule-making to allow for the export of ships to the UK for scrapping,

Exemption 7(e)

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Staff contact: Steve Shimberg at 564-2440 or his staff, Dave Kling at 564-0317 or Joyce Olin at 564-2772.